SUPERIOR COURT OF WASHINGTON
THURSTON COUNTY

NORTHWEST GAS ASS'N, A Washington corporation, *et. al.*	)	
	)	No. 07-2-00321-2. *et. al.*
Plaintiffs	)	
vs.	)	MEMORANDUM OPINION
	)	DENYING INJUNCTION
WASHINGTON UTILITIES AND TRANSPORTATION COMM., a public agency,	)	AND ORDERING PUBLIC RECORDS BE DISCLOSED
Defendant.	)	

CHRONOLGY

In early February, apparently February 7, 2007, the Bellingham Herald, and Jean Buckner of Bellevue, requested[1] Geographic Information System (GIS) data from the Utilities and Transportation Commission (UTC).

[1] The Seattle Post-Intelligencer also requested this same data on February 22, 2007, and this was followed by a similar request by the Seattle Times and Tri-City Herald on March 1, 2007.

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The UTC promptly notified all pipeline owners of these requests, and their intention to release the ESRI shapefiles,[2] unless restrained by a court order.[3]

Northwest Gas Association quickly filed a complaint on February 14, 2007, and requested an injunction preventing disclosure, along with a temporary restraining order (TRO), that would prevent release of this information, at least until there was time for court review as to whether such records should be released. The court was presented, and signed, the first of several *agreed* TROs on February 16, 2007, setting briefing schedules, and a special hearing date for Friday, March 16, 2007,[4] to consider the injunction requests.

The UTC provided copies of the TROs to the known record requestors.[5] On March 7, 2007, the court consolidated the nine cases into the first case filed, in order to properly and efficiently handle these matters. From that point all pleadings were to be filed in Thurston County Cause Number 07-2-00321-2.

On Friday, March 9, 2007, the UTC filed one Response addressing the arguments in the nine consolidated petitions. On March 12, 2007, the

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[2] Environmental Systems Research Institute ("ESRI") centerline shapefiles which are digital representations of pipeline locations, pressure regulators, taps, mileposts, cathodic protection test sites, and valves. These files also contain information about diameter, pipeline operator's names, installation date, operating pressure, wall thickness, the commodity transported (such as natural gas or other substances) and other pipeline specifications.

[3] This is required by RCW 42.56.540, particularly in conjunction RCW 80.04.095.

[4] As of this writing nine pipeline companies or associations have filed similar suits and identical agreed TROs have been filed in: Northwest Gas Assn, #07-2-00321-2, Olympic Pipeline Co., #07-2-00327-1, Chevron, #07-2-00328-0, BP West Coast Productions, #07-2-00377-8, McChord Pipeline, #07-2-00398-1, Yellowstone Pipe Line, #07-2-00399-9, Terasen Pipeline, #07-2-00435-9, Valero LP, 07-2-00437-5, and Portland General Electric, #07-2-00442-1.

[5] UTC Reply (*sic*.) Memorandum, p.6. This is the Response to Petitioners' requests for TROs and injunctions to prevent disclosure, captioned 'Reply.'

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requestors filed a Motion to Intervene and attached a brief in Opposition to the plaintiffs' injunction request. On March 14, 2007, the Petitioners filed a Reply to the UTC's Response and the Opposition of the proposed interveners. In addition, an *Amicus Curiae* brief was filed.[6]

On the afternoon of March 16, 2007, after reading all the submitted material, the court allowed the intervention of the requestors, and considered the oral arguments of the parties.

PUBLIC DISCLOSURE ACT

In 1972, the people of Washington passed Initiative 276, originally codified in Chapter 42.17 RCW.[7] This is popularly called the *Public Disclosure Act* (*PDA*). Among its provisions was the right, and method, by which members of the public could require that public records be disclosed. Over and over, the Supreme Court has affirmed that the *PDA* "is a strongly worded mandate for broad disclosure" to be construed in favor of disclosure, while any exemption claimed is to be narrowly construed, *PAWS v. U.W.*, 125 Wn.2nd 243, 251 (1994).[8]

In this case, the several plaintiffs claim seven bases on which the ESRI shapefiles (requested records) should be ruled exempt.

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[6]The *Amicus* brief was filed by Northwest Industrial Gas Users, a nonprofit association comprised of thirty-five 'end-users' of pipeline commodities.

[7] Laws of 1973, ch. 1 (Initiative 276). This is the cite found in most reported cases. However, most of chapter 42.17 RCW that dealt with public records has now been recodified as chapter 42.56 RCW as of July 1, 2006.

[8] Citing to *Hearst v. Hoppe*, 90 Wn.2d 123, 127 (1978), and former RCW 42.17.010(11), .251, and .920.

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EXEMPTIONS CLAIMED

The plaintiffs claim the follow bases for exempting the public records from being disclosed:

1. RCW 42.56.270

All nine plaintiffs claim this statute as a basis for exemption from disclosure of the requested records. The exemption alleged here is:

> "The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:
>
> (1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss…"

The requested records arguably are valuable commercial designs or drawings and proprietary information, which under particular circumstances, might qualify to be protected up to the five year period from their creation. However, the question this court, and other courts before it are called to make, is if their disclosure would lead to "produce private gain and public loss?" The PDA doesn't define, "would produce private gain and public loss," but the Supreme Court has ruled on this exemption in several cases.

In *Servais v. Port of Bellingham*, 127 Wn.2nd 820, 832 (1995), a request was made to disclose a cash flow analysis prepared for the Port to use in negotiations with potential business partners.[9] Both the trial court, and the Court of Appeals, enjoined the disclosure of the records, and they

[9] *Servais*, at page 829, citing *PAWS*, at page 255.

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were upheld by the Supreme Court. But the Supreme Court rejected the Court of Appeals definition of "research data", finding it overly-broad, and also rejected the requestor's narrow and restrictive definition, while holding, at page 832, that the term meant:

> We define "research data" as "a body of facts and information collected for a specific purpose and derived from close, careful study, or from scholarly or scientific investigation or inquiry."

The more broad definition of the Court of Appeals, which simply found research data to be "organized information," or, "material derived from a careful or diligent search which serves as a basis for discussion or decision," was rejected, in favor of a more restricted, or, limited definition, by the Supreme Court. *Id.*, pp 830-831. Both *Servais* appellate courts reached back to the earlier *PAWS*, *supra.*, decision to approve and find:[10]

> "The clear purpose of the exemption is to prevent private persons from using the Act to appropriate potentially valuable intellectual property for private gain."

If what is being requested here meets the more narrow definition of the Supreme Court for "research data" as explained *Servais*, that is, facts collected for a specific purpose or derived from scholarly or scientific investigation, and arguably it does, then is it exempt so as to prevent private persons from using the *PDA* to appropriate this valuable intellectual property for private gain and public loss? In *PAWS*, *supra.*, the undisclosed research data in the unfunded grant proposals would have amounted to intellectual

[10] *PAWS*, at page 255.

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property privacy and public loss of patent rights.[11] In *Servais* intellectual property was a cash flow analysis that would have hampered the port's ability to negotiate with potential partners. In *Spokane Research & Defense Fund v. Spokane*, 96 Wn. App. 568, 574-575 (1999), three items, or records of a financial nature, which were *used*[12] by the city in making a decision as to whether to pledge public credit and guarantee a development loan were requested. The court of Appeals instructs at pages 576-577 that to be exempt the proposed disclosure *must result in* both *private gain and public loss* [emphasis supplied]. Unlike *PAWS* and *Servais* the state agency in *Spokane Research* did not show a public loss, especially since the decision making had been completed. *Id.* Page 577.

In our case there is no reliable evidence that the documents sought would convey some private gain to the requestors, though Chevron filed a declaration of Tracy Long, a security advisor for Chevron, on February 14, 2007, in which it is alleged that Ms. Buckner asserted that she requested the information so that she could sell maps to the general public.[13] Pursuant to RCW 42.56.080 agencies can't require the requestor to divulge the purpose for which a record is sought. Therefore it must be an objective test, and not a subjective test, as to whether private gain is at risk.

In our case, the public agency, the UTC, does not even allege any public loss. Even more, they have provided this data to certain requestors,

[11] *PAWS*, page 255. Even when this is so, the exemption is not unlimited but creates a five year window where the government agency has exclusive use of the property. RCW 42.17.310(1)(h) is now RCW 42.56.270(1).
[12] Used, as opposed to merely reviewed, *Spokane R&D*, page 574-575.
[13] This hearsay, within hearsay, is not something that a court could rely on as substantive evidence.

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and have even compiled over 500 atlases for distribution containing much, but not all, the information in the ESRI shapefiles.[14] With so much information about these files already out in the public arena what evidence is there now that this request would result in either private gain or public loss?

Petitioners Pipelines have not met the burden of proof[15] required for an injunction to be granted pursuant to *Tyler Pipe v. DOR*. 96 Wn 2nd 785, 792, (1982),[16] nor, has the agency proved that the records should not be disclosed pursuant to their burden set out RCW 42.56.550, either as to private gain or public loss, and when one puts this in the context of broadly construing disclosure and narrowly construing exemptions this exemption does not apply.[17]

2. RCW 80.04.095

The plaintiffs claim that this statute forms a basis for exemption from disclosure of the requested records. Parsing RCW 80.04.095, for ease of analysis, it reads:

> Records, subject to chapter 42.56 RCW, . . . which contain valuable commercial information, . . . and network configuration and design information, shall not be subject to inspection or copying under chapter 42.56 RCW: (1) Until notice . . . . The court shall determine that the records are confidential and not subject to inspection and copying if disclosure would result in private loss, including an unfair competitive disadvantage. When providing information to the

[14] Affidavit of Alan Rathbun, director of the UTC pipeline safety program, filed March 9, 2007, pp. 2-3.
[15] The requestor/interveners argue RCW 42.56.550(1) puts the burden of proof on the plaintiffs. However, that statute speaks only to the burden of proof being on the agency.
[16] Here, no clear legal or equitable right has been shown. To get an injunction one must show, (1) a clear right, (2) well-grounded fear that the right will be invaded, and (3) harm will result, *Tyler Pipe*, p. 792.
[17] The requestors even argue that the public interest would be benefited by disclosure of this information, Opposition to Injunction, filed March 12, 2007, p.7.

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> commission or the attorney general, a person shall designate which records or portions of records contain valuable commercial information. . . . [Emphasis supplied]

Here the test the court is to employ is "if disclosure would result in private loss, including an unfair competitive disadvantage." However, to trigger the application of this test, the entity providing information "shall designate which records or portions of records contain valuable commercial information." The UTC provides a specific procedure for designating confidential information in WAC 480-07-160. Rule 160(3) requires "strict compliance." Plaintiffs who did not follow this strict procedure cannot claim this exemption.

Only one plaintiff, *Terasen,*[18] has, submitted a declaration stating that they complied with the requirements of Rule 160. This was a rather vague reference made by Hugh Harden in his affidavit of February 27, 2007, page two, where he states that certain information was filed in conformance with Rule 160 on some unstated date in February 2007. The court finds it vague because he doesn't say that the UTC accepted his firm's designation of records being confidential, assuming certain records were so marked when submitted. What is more, this is followed by his admission that on February 20, 2007, the UTC informed his firm that they intended to release the information. One can only reasonably conclude that the UTC did not rule the records confidential, even if some were so marked.

[18] *Terasen Pipelines (Puget Sound) Corp. v. WUTC*, #07-2-00435-1.

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In any case, it is not a subjective test to be employed at the whim of the entity providing information. Rule 160 may apply to confidential portions of records that: (a) are protected under the *PDA*, or, (b) information protected pursuant to an order in an adjudicative proceeding, or, (3) valuable commercial information as provided in[19] RCW 80.04.095. Rule 160(4) allows either the UTC, or, a requestor, to challenge the claim of confidentiality. If it is challenged the burden to prove confidentiality is on the one claiming it. Rule 160(5) allows a person to request information that the UTC has found to be confidential, but again, only pursuant to a procedure set out in the rule. Based on the UTC's action, the only reasonable conclusion is that Terasen did not meet their burden of proof on their claim of confidentiality before the UTC.

So, then, pursuant to RCW 80.04.095 itself, and as implemented under Rule 160, if there is not a protective order in an adjudicative proceeding then confidentiality must be claimed under some section of chapter 42.56 RCW, or, Rule 160 strictly followed.[20]

None of the plaintiffs have met their burden of proof to establish an exemption pursuant to RCW 80.04.095 and WAC 480-07-160.

[19] Emphasis supplied by this court.
[20] Of course this Rule is, in part, a tautology, *i.e.* only finding confidentiality if the statute is followed but to follow the statute you have to follow the procedure in the rule.

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3. RCW 80.04.095 through RCW 42.56.330(1)[21]

Several plaintiffs claim that, even though they may not have followed the strict procedure of WAC 480-07-160 (Rule 160), that RCW 42.56.330(1) still provides a second chance at the exemption. They argue a court is allowed, for the first time, to determine if the requirements of RCW 80.04.095 can support an exemption to disclosure. RCW 42.56.330(1) states:

> The following information relating to public utilities and transportation is exempt from disclosure under this chapter:
>
> (1) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095;

So, then, *arguendo,* RCW 42.56.330(1) allows a court to make an independent determination as to whether the conditions described in RCW 80.04.095 support an exemption. This is a little odd, or, inconsistent, since that statute (RCW 80.04.095) requires a procedure to be followed as set out by the UTC. Nevertheless, if a court is able to read the statute with the understanding that the Legislature created a method for a confidentiality determination to be made without consideration of the last sentence in the statute then that might be considered.

Of course, the first obstacle one runs into if this logic is to be followed is that exemptions are to be narrowly construed, and disclosure is broadly favored, so how can a court justify reading the statute without the last

[21] Effective July 1, 2006, Laws of 2005, ch. 274 § 413. This statute was amended a second time in Laws of 2006, ch. 209 § 8.

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sentence? That basis alone is sufficient to deny the application of this exemption.

Nevertheless, plaintiffs argue that the court can determine confidentiality "if disclosure would result in private loss, including an unfair competitive disadvantage".[22] In this regard certain plaintiffs file conclusory affidavits[23] alleging release of this information could cause a competitive disadvantage and result in private loss. As far as this court can now determine no higher court has ruled on this new statute and no ruling has been brought to this court's attention by any of the parties' or other memorandums.

But a simple review of the March 7, 2007, affidavit of Alan Rathbun, director of the pipeline safety program at the UTC, shows the records requested have already been provided to many other requestors such as fire officials or local governments and even 500 atlases distributed, containing slightly less data, for use by others. What is more, the UTC has commenced posting the atlases on the internet to allow full public access, at least as to pipeline location and route information.

Under these circumstance an injunction based on RCW 42.56.330(1) through RCW 80.04.095 is denied. Plaintiffs have not met their burden of proof.

[22] A portion of RCW 80.04.095 taken out of the context of the complete statute.
[23] Illustrative are the affidavits of Hector Fajardo, a vice president for asset management with Chevron, who filed an affidavit with this allegation (page 3) on February 15, 2007, in #07-2-00328-0 and Hugh Harden, vice president for operations of Terasen, who filed an affidavit with such an allegation (page 3) on February 28, 2007, in #07-2-00435-9.

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4. RCW 42.56.540

Several plaintiffs argue that RCW 42.56.540 creates an independent, or unspecified, exception to public record disclosure. Our Supreme Court has said that RCW 42.17.540[24] is simply an injunction statute that sets out *procedure* to enjoin release *if* a *specific* exemption is found elsewhere, *PAWS*, 125 Wn.2nd at page 257.[25] The Supreme Court makes clear in *PAWS*, page 258, n.6, that the Legislature has "never adopted an all-purpose or open-ended exemption". RCW 42.56.540 is the recodification of RCW 42.17.330 and *PAWS* makes clear at page 257, that this section of the *PDA* governs access to a remedy not the substantive basis for a remedy.

Plaintiffs claim for an exemption pursuant to RCW 42.56.540 is denied.

5. RCW 42.56.420

This new exemption became effective July 1, 2006.[26] As of this writing, no appellate court has examined it, so it is a matter of first impression. All of the plaintiffs claim the records requested fall within RCW 42.56.420, and in their joint Reply brief, specifically RCW 42.56.420(1)(a). This statute has only been in effect for less than eight months, and because the Legislature passed Laws of 2005, chapter 274, as

[24] RCW 42.17.330 referred to in *PAWS* has been recodified as RCW 42.56.540.
[25] At page 257, in *PAWS*, it is the Supreme Court that supplies the emphasis to "*procedural*" and "*specific.*" They also clarify at page 261, n.7, any language suggesting something different than merely procedural found in *Dawson v. Daly*, 120 Wn.2nd 782 (1993) is overruled, or, distinguished to the extent it is inconsistent with their ruling.
[26] Laws of 2005, ch. 274 § 502.

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an Act specifically relating to public records, recodifying much of former chapter 42.17 RCW, and making particular technical changes during a specific focus on public records, their recent language should be closely examined and followed. The court's obligation is to follow the Legislature's intent, as long as it is constitutional, and there is no argument here of any constitutional violations.

RCW 42.56.420(1)(a) states the following:

> The following information relating to security is exempt from disclosure under this chapter:
>
> (1) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:
>
> (a) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; and
>
> * * * * * * *

The Legislature describes information relating to security as exempt if it is a portion of a record "assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts." So, the first inquiry is whether these requested records were assembled, prepared or maintained to prevent, mitigate or respond to criminal terrorist acts? If so, then the second inquiry is whether their disclosure would likely threaten public safety in a certain way.

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The certain way is the third inquiry. That is, whether public safety would be threatened by specific and unique vulnerability assessments or specific response plans, including the underlying data compiled in preparation to response plans or essential to assessment of such plans.

So, the first question is, were these records prepared or maintained to prevent or respond to terrorist acts?[27]

The Legislature passed the *Pipeline Safety Act,* in Laws of 2000, ch. 191, enacted with an emergency clause to be effective on March 28, 2000, when it was approved by the Governor.[28] The Act recognized that the state should work with the federal government, but also adopt its own public safety and environmental standards for pipelines, and other methods of transporting hazardous materials.[29] This legislation was directed toward safety issues, not 'terrorist acts,' though, of course, such acts are always nested within the larger issue of safety itself.

Part of this Act enacted what is now RCW 81.88.080. This required pipeline companies to provide accurate maps and specifications regarding their pipelines to meet the needs of first responders so that the UTC could consolidate the maps into a statewide geographic information system (GIS). This information was then to be made available to the "one-number locator

[27] The drafters of this legislation list descriptors that have overlapping connotations even though they may denote differences. The arguments are easier to see if we use only the essential portions as long as some determinative descriptor is not omitted. For instance, if the case turned on whether the records were "assembled" or whether they were "prepared" then both should be considered. In this case the ruling will be same whether the records are described as being "assembled" or described as being "prepared."
[28] Portions of the legislation were vetoed by the Governor.
[29] Laws 2000, ch. 191, § 1, which amended or added several sections to the RCW including RCW 81.88.005 which sets out its intent.

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services".[30] The GIS database includes the ESRI shapefiles which are the digital representations of pipeline locations and other specifications.[31] These are the records requested in our case.

The plaintiffs argue RCW 42.56.420(1) exempts these records because they contain details of the pipeline's components and in responding to any incident, including one that might be caused by a terrorist, one has to know the components. That begs the question. Knowing the components is necessary for any response to an incident, not specifically a terrorist incident, or, some other insane action. For instance, these components would have to be known in order to best respond to any incident, such as if a backhoe operator punctured one of these pipelines by digging in an unsafe manner. That's why this information was created, to assist first responders and also to tie in with RCW 19.122.027, the one-number locator system.

The records requested here were prepared and are maintained to assist first responders in relationship to any incident and to coordinate with the federal government so that there would be a useable database for pipelines that carry hazardous material. Could that include an incident caused by the insane logic of a terrorist? Of course, but that possibility, though real, is not the purpose for which these records were prepared – at least pursuant to the legislation enacted by Laws 2000, ch. 191, known as the *Pipeline Safety Act*.

[30] This refers to ch. 19.122 RCW dealing with underground utilities and specifically RCW 19.122.027.
[31] See affidavit of Alan Rathbun, director of the UTC pipeline safety program, filed March 9, 2007, pp. 2-3.

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The word "terrorist(s)" does not even appear in that legislation rather it speaks of "public safety," "environment," and "serious accidents."[32]

However, the plaintiffs argue that, even if these records were compiled and maintained for safety purposes that the court should give a broad interpretation to this exemption, since among the factors that could affect public safety would be "terrorist acts," and the potential for harm is great if such a person or persons were to obtain and learn how to use the sophisticated software required, and by that means, learn where the pipelines might be most vulnerable. They argue that the records were not gathered for a "sole" purpose and that the exemption might consider all purposes for which the information might have been gathered.[33] This argument might be more persuasive if several purposes were listed in the legislation that required the records to be gathered and maintained. Then a court 'might' be able to follow the principle of narrowly construing the exemption and still find room to apply the exemption. Perhaps that is one of the purposes of the pending legislation found in House Bill 1478, which as of early afternoon March 16, 2007, was still under consideration in the House of Representatives, and briefly addressed below. At oral argument plaintiffs' counsel conceded that this bill would not pass in this year's Legislature but that plaintiffs held out hope for some policy statement from the Legislature on this issue.

[32] RCW 81.88.005
[33] Plaintiff's Reply brief, p.8.

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So, then, the plaintiffs claim for an exemption does not meet the first RCW42.56.420(1) test. They have not met the burden of proof that these records were prepared or maintained to prevent or respond to terrorist acts.

Having failed the first test we don't get to the second test of whether their disclosure would threaten public safety. The plaintiffs assume that this threat must be true. Over, and over again, they raise the specter of "9/11." However, we need to have the courage to use that shocking lesson, and at the same time go on to live free and democratic lives. Shall we refuse to publish ferry schedules because it would make it easier for insane terrorists to meet the boat at the dock and time an explosion? If so, then it is the people by Initiative, or, their representatives in the Legislature, that must write a clear law as to what is exempt from disclosure. The court should not be asked to turn the guiding principles of the *PDA* upside down by giving exemptions a broad construction, and disclosure a narrow construction, which is what is being sought here. That is the only way the plaintiffs could pass the second test of this statute.

The third test is not reached when the first and second are not met but it suffers from the same lack of specificity. There is no evidence of public safety being threatened by disclosure of specific and unique vulnerability assessments or specific response plans, which then, might include the underlying data compiled in preparation to response plans or essential to assessment of such plans. Any response plan is not for terrorist activity but to guide first responders in case of an accident or other safety issues. Could that include a terrorist act? Of course, since it could include many things,

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including construction accidents, or, the interference of someone with insane logic, but that kind of construction of the exemption is broad and not narrow.

It is very telling that none of the pipelines (with the possible exception of Terasen[34]) marked this data as confidential and followed the RCW 80.04.095 and WAC 480-07-160 procedure set out by the Legislature and the UTC. Only now is there a claim of confidentiality. Why was not such a claim and the proper procedure followed if such a claim could be sustained in 2000 – or, at any time since? Second, the UTC, which would have the burden of proof if they believed that this data was exempt might have held it back, and filed a log with the court, but they did not. Although in the end it is the court's decision, and not the agency's, as to what is exempt, it is the agency that makes the initial determination.[35] They did that here. They determined that they would honor the request and release the material and informed the pipelines of their decision.

They plaintiffs have not met their burden of proof to claim this exemption.

6. House Bill Number 1478

There is currently pending in the House of Representatives a piece of legislation identified as HB 1478 which, as amended, would amend RCW 81.88.080 to limit certain information to only first responders, and make available to the public only limited data, such as maps of a scale of 1:24,000.

[34] But as discussed above though they may have started such a procedure it was not successfully completed.
[35] *Servais*, supra., 127 Wn.2nd 820 at 834-835.

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This court expresses no opinion on the language of this bill or what effect it would have if passed. So far, it doesn't contain an emergency clause, is not retroactive, hasn't been passed by the Senate, nor, signed by the Governor. As such it has no weight regarding the intent of the Legislature as a whole.

Although the court is appreciative that the plaintiffs bring this to the court's attention for consideration, it can contain no weight at this point in the consideration of this case.

7. Federal Preemption

The final basis by which the plaintiffs claim an exemption is that disclosure of these records is somehow preempted by the authority of the federal government. First, an argument of this kind was strongly made in *PAWS*, 125 Wn.2nd 243, 265-268. This court can not improve on the analysis undertaken by the Supreme Court in that case. The Federal *Freedom of Information Act* (*FOIA*) does not expressly preempt the state *PDA* and doesn't apply to state agencies, *PAWS*, page 265-266. Although *PAWS* does not rule out the possibility that a certain federal statute in a particular situation might preempt a state action no showing of that has been made here.

Secondly, if the Federal Government has an interest in these records as a security issue, then the Federal Government though Homeland Security, or, by an appearance of the United States Attorney requesting to intervene or, perhaps, remove the case to Federal Court, might have occurred. This

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has just not happened. There also is no evidence, nor law, that would lead one to believe that such participation would be successful.[36]

Third, the court does note, and respect, that RCW 42.56.420(1)(b) that records not subject to disclosure under federal law, such as national security briefings with local officials, related to preparedness for acts of terrorism would be, and are, exempt. However, there is no evidence that the records requested here come under this section – save by a strained and broad interpretation as explained above.

CONCLUSION AND ORDER

Having considered the seven bases by which plaintiffs claim these requested records exempt, this court finds that only under a construction calling for a narrow right to disclosure, while broadly construing any exemption, could such an argument prevail. The court denies the injunction, and orders the UTC to follow through with the initial movement to disclose the records.

Dated: March 16, 2007

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Richard D. Hicks
Superior Court Judge

[36] If a case is removed to Federal Court then the State Court immediately loses jurisdiction upon the removal, but, if the removal was precipitous, then it bounces right back.

Richard D. Hicks, Superior Court Judge
Thurston County Superior Court
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